

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
SOUTHWESTERN DIVISION**

THOMAS L. CLELLAND, )  
v. )  
Plaintiff, )  
CUNNINGHAM SANDBLASTING AND ) No. 06-5042-CV-SW-FJG  
PAINTING, INC., et al., )  
Defendants. )

**ORDER**

Pending before the Court is Defendant Caldwell Tanks, Inc.'s Motion to Dismiss (Doc. No. 58).

This case was reported settled on February 8, 2007. The mediator in this matter indicated the parties were to exchange checks and sign the release on February 9, 2007. On March 22, 2007, defendant filed the pending motion to dismiss plaintiff's petition with prejudice, indicating that plaintiff came to counsel for defendant Caldwell Tanks, Inc.'s law office on February 9, 2007, signed a full and absolute release of all claims (see Exhibit B to Doc. No. 58), and counsel turned over the checks to plaintiff (copies of which are attached to Doc. No. 58 as Exhibit C and Doc. No. 61 as Exhibit A). Defendant's counsel avers that at the signing of the release and exchange of checks, he forgot to get plaintiff's signature on a voluntary dismissal (further noting that plaintiff's agreement to sign dismissal papers was part of the agreement reached at mediation, see Exhibit A to Doc. No. 58). As of March 22, 2007, plaintiff had failed to sign the dismissal papers. Therefore, defendant filed the pending motion to dismiss with prejudice, as the release has been signed and the

checks exchanged.

After reviewing plaintiff's pro se response brief, which did not address issues relevant to whether plaintiff had signed the release and accepted the checks from the defendants, this Court ordered plaintiff to provide answers to the following limited questions: (1) Did defendant's counsel turn over the checks to plaintiff?; and (2) Did plaintiff sign the Release on February 9, 2007? See Order of April 5, 2007, Doc. No. 60. Plaintiff was directed to file his answers to these limited questions with the Court on or before **April 19, 2007**, and plaintiff was cautioned that failure to respond to this Order would result in the case being dismissed without further notice.

Nonetheless, to-date plaintiff has failed to respond to the Court's Order. Therefore, defendants' motion to dismiss (Doc. No. 58) will be **GRANTED**, and this case is **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that the Clerk of the Court send a copy of this order via regular and certified mail to plaintiff at the following address:

Thomas L. Clelland  
403 E. 20<sup>th</sup> St.  
Pittsburg, Kansas 66762

**IT IS SO ORDERED.**

Date: 4/25/07  
Kansas City, Missouri

**S/ FERNANDO J. GAITAN, JR.**  
Fernando J. Gaitan, Jr.  
Chief United States District Judge